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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 IN RE: HIGH-TECH EMPLOYEE
14 ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

15 THIS DOCUMENT RELATES TO:
16 ALL ACTIONS

**DEFENDANTS' JOINT
ADMINISTRATIVE MOTION TO SEAL**

Pursuant to Local Rule 7-11 and 79-5, defendants Adobe Systems, Inc., Apple Inc., Google Inc., and Intel Corporation (collectively, “Defendants”) hereby jointly move to seal redacted portions of the following:

(i) Exhibits attached to the Declaration of Victoria Weatherford filed in support of Apple’s Motion for Summary Judgment (“Apple MSJ”);

(ii) Google’s Motion for Summary Judgment (“Google MSJ”) and exhibits attached to the Declaration of Anne Selin filed in support thereof;

(iii) Exhibits attached to the Declaration of Christina Brown filed in support of Defendants’ Motion to Exclude the Expert Testimony of Edward E. Leamer, Ph.D. (“Leamer *Daubert* Motion”); and

(iv) Exhibits attached to the Declaration of Christina Brown filed in support of Defendants’ Motion to Strike Improper Rebuttal Testimony in Dr. Leamer’s Reply Expert Report or, in the Alternative, for Leave to Submit a Reply Report of Dr. Stiroh (“Motion to Strike Improper Rebuttal Testimony”).

The redacted information has been designated Confidential or Attorneys’ Eyes Only under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). Defendants are concurrently filing declarations in support of the respective sealing requests.

I. LEGAL STANDARD

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of documents for, inter alia, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). Where the documents are submitted in connection with a dispositive motion, the Ninth Circuit has ruled that documents should be sealed when “compelling reasons” exist for protecting information from public disclosure. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006). Courts have found that “[o]ne factor that weighs in favor of sealing documents [under the compelling reasons standard] is when the release of the document will cause competitive harm to a business.” *Apple v. Samsung*, 727 F.3d 1214, 1221-22 (Fed. Cir. 2013); *Apple Inc. v. PsystarCorp.*, 658 F.3d 1150, 1162 (9th Cir. 2011) (“The publication of

1 materials that could result in infringement upon trade secrets has long been considered a factor
 2 that would overcome this strong presumption.”); *see also* *Nixon v. Warner Commc’n, Inc.*, 435
 3 U.S. 589, 598 (1978) (“common-law right of inspection has bowed before the power of a court to
 4 insure that its records” are not used as “sources of business information that might harm a
 5 litigant’s competitive standing”). Moreover, the release of trade secrets constitutes “compelling
 6 reasons” sufficient to outweigh the public’s interest in disclosure. *Samsung*, 727 F.3d at 1221-
 7 22.

8 By contrast, documents submitted with a non-dispositive motion need only meet a
 9 showing of “good cause” under Federal Rule of Civil Procedure 26(c). *Navarro v. Eskanos &*
 10 *Adler*, No. C-06 02231, 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. Mar. 22, 2007) (citing
 11 *Kamakana*, 447 F.3d at 1180 (“[A] ‘particularized showing’ under the ‘good cause’ standard of
 12 Rule 26(c) will ‘suffice[] to warrant preserving the secrecy of sealed discovery material attached
 13 to nondispositive motions.”); *see also* *Pintos v. Pacific Creditors Assoc.*, 565 F.3d 1106, 1115
 14 (9th Cir. 2009) (“In light of the weaker public interest in nondispositive materials, we apply the
 15 ‘good cause’ standard when parties wish to keep them under seal.”).

16 **II. COMPELLING REASONS EXIST TO SEAL CONFIDENTIAL INFORMATION**
 17 **SUBMITTED IN SUPPORT OF THE MOTIONS FOR SUMMARY JUDGMENT**
 18 **AND LEAMER DAUBERT MOTION.**

19 The redacted portions of the exhibits filed in support of the Apple MSJ, Google MSJ, and
 20 Leamer *Daubert* Motion contain highly confidential and commercially sensitive information
 21 about employee compensation, including Defendants’ compensation data as well as information
 22 that reflects Defendants’ internal business strategies related to compensation and internal
 23 assessments of their and other employers’ competitive position in the labor market. Defendants
 24 also seek to keep under seal materials that reflect confidential hiring data, which reveal
 25 confidential recruiting and hiring strategies, practices, and policies. Defendants designated the
 26 foregoing information “Confidential” or “Attorneys Eyes Only” under the Protective Order.

27 As the concurrently filed declarations demonstrate, Defendants keep the sealed
 28 information confidential and the public disclosure of this information would cause each

1 Defendant harm by giving third-parties (including individuals responsible for competitive
2 decision-making) insights into confidential and sensitive aspects of each of the Defendants'
3 strategies, competitive positions, and business operations, allowing these third-parties to
4 potentially gain an unfair advantage in dealings with and against each of the Defendants.

5 This type of information is regularly sealed because disclosure could cause competitive
6 harm. *See, e.g., Rich v. Shrader*, No. 09CV652, WL 6028305, at *3-4 (S.D. Cal. Nov. 13, 2013)
7 (granting motion to seal deposition testimony attached to summary judgment motion that
8 contains "information on Booz Allen compensation policies" and "internal policies and controls
9 with regards to employee performance and review"); *Krieger v. Atheros Commc'ns, Inc.*, No. 11-
10 CV-00640, 2011 U.S. Dist. LEXIS 68033 at *3-4 (N.D. Cal. June 25, 2011) (sealing "sensitive
11 and confidential information, including long-term financial projections, discussions of business
12 strategy, and competitive analyses" under the compelling reasons standard); *EEOC v. Kokh,*
13 *LLC*, No. CIV-07-1043, 2010 U.S. Dist. LEXIS 82526, at n.1, 2010 BL 187807 (W.D. Okla.
14 Aug. 09, 2012) (sealing summary judgment materials that discuss "confidential salary
15 information"); *Network Appliance, Inc. v. Sun Microsystems Inc.*, No. C-07-06053, 2010 U.S.
16 Dist. LEXIS 21721, at *9 (N.D. Cal. Mar. 10, 2010) (sealing "internal information regarding
17 [defendant's] business strategies and opportunities that were not widely distributed"); *see also*
18 *TriQuint Semiconductor, Inc. v. Avago Techns. Ltd.*, No. CV 09-531, 2011 U.S. Dist. LEXIS
19 143942, at *9 (D. Ariz. Dec. 13, 2011) (granting motion to seal "market analysis information,"
20 under compelling reasons standard, including business strategy documents, such as information
21 relating to "product competitiveness, and market and technological opportunities and risks").

22 Moreover, the redacted information constitutes trade secrets, defined as "any formula,
23 pattern, device or compilation of information which is used in one's business, and which gives
24 him an opportunity to obtain an advantage over competitors who do not know or use it."
25 *Samsung*, 727 F.3d at 1221-22. As evidenced by the concurrently filed declarations, the
26 information Defendants seek to seal relate to Defendants' internal business practices and
27 strategies used in compensating, recruiting, and hiring employees, as well as the confidential
28 terms of business agreements. This falls plainly within the trade secrets definition. *Id.*; *see also*

1 *In re Electronic Arts, Inc.*, 298 F. App'x. 568, 569-70 (9th Cir. 2008).

2 **III. GOOD CAUSE EXISTS TO SEAL CONFIDENTIAL INFORMATION IN**
 3 **CONNECTION WITH DEFENDANTS' MOTION TO STRIKE IMPROPER**
 4 **REBUTTAL TESTIMONY.**

5 Defendants also seek to seal portions of exhibits filed in support of the Motion to Strike
 6 Improper Rebuttal Testimony, subject to the "good cause" standard. Much of these exhibits
 7 contain the same commercially sensitive information as described above. As shown by the
 8 concurrently filed declarations, Defendants move to seal redacted portions of exhibits regarding
 9 compensation and recruiting strategies, methods, practices, and policies. To the extent that this
 10 information satisfies the "compelling reasons" standard discussed above, it also meets the lower
 11 "good cause" standard. *See e.g., In re Wells Fargo Loan Processor Overtime Pay Litig.*, No. C
 12 07-01841, at *16, 2008 U.S. Dist. LEXIS 53616, 2008 BL 123131 (N.D. Cal. June 09, 2008)
 13 (noting that a "compensation policy" was filed under seal in connection with non-dispositive
 14 motion). Moreover, much of this information has been previously sealed by this Court under the
 15 "good cause" standard. *See, e.g.,* January 15, 2013 Sealing Order (Dkt. 273); September 19,
 16 2013 Sealing Order (Dkt. 509). For example, Defendants request sealing of discussions in the
 17 Expert Report of Lauren Stiroh that are based on Defendants' company declarations which the
 18 Court has previously sealed. January 15, 2013 Sealing Order (Dkt. 273) at 17-19.

19 **IV. INFORMATION DESIGNATED CONFIDENTIAL BY OTHER PARTIES.**

20 Finally, pursuant to Local Rule 79-5(e), Defendants seek to seal certain information
 21 which reflect documents designated as "CONFIDENTIAL" or "CONFIDENTIAL –
 22 ATTORNEYS' EYES ONLY" under the Protective Order by Plaintiffs, Intuit Inc., Lucasfilm,
 23 and Pixar. The redacted portions which fall under this category are detailed in the accompanying
 24 Declaration of Lin W. Kahn. Defendants take no position on whether the designated documents
 25 satisfy the requirements for sealing.

26 **I. CONCLUSION**

27 For the foregoing reasons, Defendants respectfully request that this Court order the
 28 above-referenced materials be placed under seal.

1
2 Dated: January 9, 2014

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23 **ATTESTATION:** Pursuant to Local Rules, the filer attests that concurrence in the filing of this
24 document has been obtained from all signatories.
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